

THE LEGISLATIVE ASSEMBLY OF
BRITISH COLUMBIA

RETENTION AND DISPOSAL OF GOVERNMENT RECORDS

SELECT STANDING COMMITTEE ON PUBLIC ACCOUNTS



SECOND REPORT
THIRD SESSION, THIRTY-EIGHTH PARLIAMENT

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about this and other Select Standing and Special Committees: **<http://www.leg.bc.ca/cmt>**



November 22, 2007

To the Honourable
Legislative Assembly of the
Province of British Columbia

Honourable Members:

I have the honour to present herewith the Second Report of the Select Standing Committee on Public Accounts.

This Report outlines the committee's role in approving the retention and disposal of government records, pursuant to section 3 of the *Document Disposal Act* (R.S.B.C. 1996, c. 99).

Respectfully submitted on behalf of the Committee,

A handwritten signature in black ink, appearing to read "Rob Fleming". The signature is stylized with a long, sweeping underline.

Rob Fleming, MLA
Chair

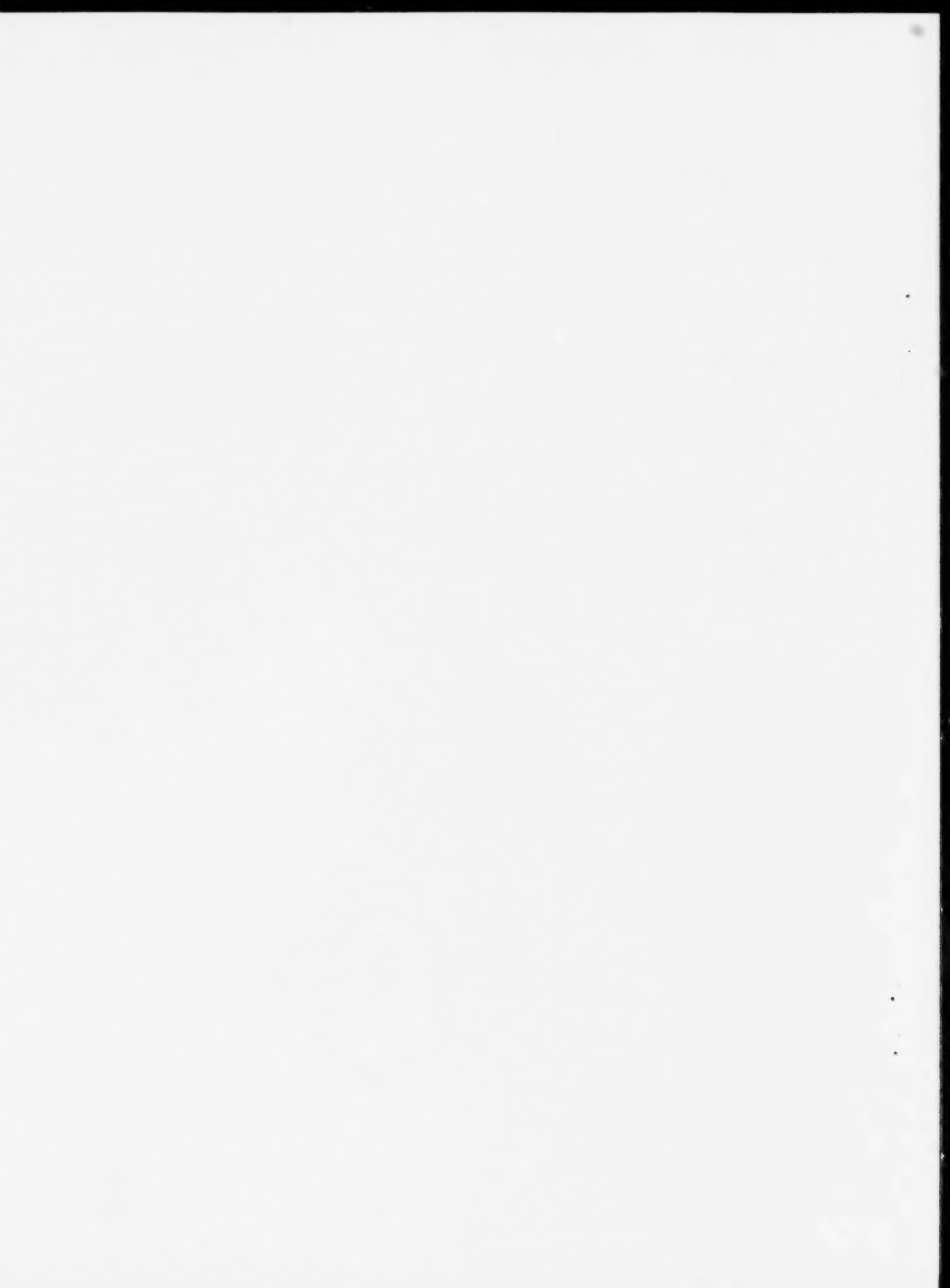


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COMPOSITION OF THE COMMITTEE

MEMBERS

Rob Fleming, MLA	Chair	Victoria-Hillside
Joan McIntyre, MLA	Deputy Chair	West Vancouver-Garibaldi
Harry Bains, MLA		Surrey-Newton
Iain Black, MLA		Port Moody-Westwood
Guy Gentner, MLA		Delta North
Randy Hawes, MLA		Maple Ridge-Mission
Mary Polak, MLA		Langley
Bruce Ralston, MLA		Surrey-Whalley
John Rustad, MLA		Prince George-Omenica
Ralph Sultan, MLA		West Vancouver-Capilano
Diane Thorne, MLA		Coquitlam-Maillardville
John Yap, MLA		Richmond-Steveston

CLERK TO THE COMMITTEE

Craig James, Clerk Assistant and Clerk of Committees

COMMITTEE RESEARCHERS

Josie Schofield, Committee Research Analyst

STATUTORY AUTHORITY

Under section 3 of the *Document Disposal Act* (R.S.B.C. 1996, c. 99), three separate entities are required to approve the destruction of government records: the Public Documents Committee, the Select Standing Committee on Public Accounts and the Legislative Assembly:

APPROVALS REQUIRED

- 3 (1) *A document must not be destroyed except on the written recommendation of the Public Documents Committee, which consists of the chief executive officer of the museum or a person designated by the chief executive officer, a person designated by the minister responsible for the administration of this Act, the Comptroller General, and 3 other persons to be named by the Lieutenant Governor in Council.*
- (2) *A document must not be destroyed before the expiration of 7 years from the date on which it was created unless one of the following conditions is met:*
- (a) 2 years have expired from the date on which the document was created and a microfilm copy of it is available to the officer who would, but for the destruction, have charge or custody of the document;*
 - (b) a recommendation under subsection (1) has been approved by the Legislative Assembly on the recommendation of the Select Standing Committee of the Legislative Assembly on Public Accounts and Economic Affairs;*
 - (c) the document is*
 - (i) listed in a records schedule approved by the Select Standing Committee of the Legislative Assembly on Public Accounts and Economic Affairs, and*
 - (ii) destroyed in accordance with the instructions in the records schedule.*

REVIEW OF RESOLUTIONS FOR RECORDS RETENTION AND DISPOSAL AUTHORITIES

BACKGROUND

The *Document Disposal Act* requires the consent of the Legislative Assembly to destroy a government record within the provincial public service. The Public Documents Committee (PDC) reviews each year the records retention schedules created by the line ministries and central agencies according to the legal, operational and financial obligations inherent in the records. If the records have long-term value to the corporate government, then the PDC recommends their retention by the government archives. If their value is limited, the PDC recommends that the records be kept in ministry storage for a period of time and then once the obligations have lapsed, be confidentially destroyed.

Pursuant to section 3 of the Act, the PDC submits each year for consideration and approval by the Select Standing Committee on Public Accounts Committee (the Committee) a copy of each of the records retention and disposal authorities the PDC has recommended for approval by the Legislative Assembly. Once approved, those authorities will govern the retention and final disposition of the government records.

At the meeting on April 19, 2007, the PDC Chair and Provincial Archivist presented to the Committee 16 resolutions for records retention and disposal authorities. He pointed out that this collection of schedules contains a major streamlining of recordkeeping practices relating to the human resources component of the government — the first major overhaul in at least 20 years.

Several other schedules relate to general housekeeping practices and cleanup, including a review of how the legal discovery program is working, primarily for tobacco litigation. Finally, there were seven new records schedules from agencies, covering such topics as liquor distribution, police services, gaming, natural resource authorization and emergency health.

COMMITTEE INQUIRY

Members asked the witness two general questions — first, whether there are currently any really severe, or crisis-level, problems with record preservation in the B.C. government. In his response, the PDC Chair stated that his committee has received no indication of such problems, and that the challenge of managing electronic records is in hand.

The second question focused on the relationship between the B.C. Archives and the Legislative Library. Members were informed that the mandates of the two repositories differ, with the former collecting archival records and historical papers, while the latter collects records relating to governance and the province's legislative history.

COMMITTEE RECOMMENDATIONS

The Committee recommends to the Legislative Assembly acceptance of the following 16 resolutions for records retention and disposal authorities:

1. That the management of the retention and final disposition of the human resources records of the ministries of the Government of British Columbia be amended in accordance with the *Administrative Records Classification System (ARCS): 2006 Amendment – Section 5 Human Resource Management*.
2. That the management of the retention and final disposition of the non-Office of Primary Responsibility (non-OPR) administrative records and other administrative records of the ministries of the Government of British Columbia be amended in accordance with the *Administrative Records Classification System (ARCS): Non-OPR Retention Management*.
3. That the management of the retention and final disposition of the administrative records of the ministries of the Government of British Columbia be amended in accordance with the *Administrative Records Classification System (ARCS): 2006 Amendment – Miscellaneous*.
4. That the management of the retention and final disposition of the operational records of the British Columbia Public Service Agency be in accordance with the records schedules, standards, and guidelines described in the *Public Service Personnel Management Operational Records Classification System*.
5. That the management of the retention and final disposition of the operational records of the Liquor Distribution Branch be in accordance with the records schedules, standards, and guidelines described in the *Liquor Distribution Operational Records Classification System*.
6. That the management of the retention and final disposition of the administrative records of the Liquor Distribution Branch relating to facility and security management, payroll services, and most human resource management services be in accordance with the records schedules, standards, and guidelines described in the *Liquor Distribution Administrative Records Classification System (ARCS) Supplement*.
7. That the retention and final disposition of the operational records of Regional Client Services, Ministry of Agriculture and Lands, relating to "FrontCounter BC" be in accordance with the records schedules, standards, and guidelines described in the *Natural Resource Authorization Processing Operational Records Classification System*.
8. That the retention and final disposition of the operational records of the Environmental Assessment Office, Ministry of Environment, be in accordance with the records schedules, standards, and guidelines described in the *Environmental Assessment Office Operational Records Classification System*, as amended.
9. That the retention and final disposition of the operational records of the Office of the Comptroller General, Ministry of Finance, be in accordance with the records schedules,

standards, and guidelines described in the *Office of the Comptroller General Operational Records Classification System*.

10. That the management of the retention and final disposition of the non-Office of Primary Responsibility (non-OPR) operational records of the Ministry of Forests and Range be in accordance with the records schedules, standards, and guidelines described in the *Ministry of Forests Operational Records Classification System – Amendment 9 Standard Non-OPR Retention*.
11. That the management of the retention and final disposition of the operational records of the Emergency Health Services Commission, Ministry of Health, be in accordance with the records schedules, standards, and guidelines described in the *Emergency Health Services Operational Records Classification System*.
12. That the management of the retention and final disposition of the operational records of the Emergency Medical Assistants Licensing Board, Ministry of Health, be in accordance with the records schedules, standards, and guidelines described in the *Emergency Medical Assistants Licensing Operational Records Classification System*.
13. That the management of the retention and final disposition of the operational records of the Provincial HR Management Systems Partnership, Ministry of Labour and Citizens' Services, be in accordance with the records schedules, standards, and guidelines described in the *Payroll Services Operational Records Classification System*.
14. That the management of the retention and final disposition of the operational records of the Community Safety Policy and Programs Division, Ministry of Public Safety and Solicitor General, be in accordance with the records schedules, standards, and guidelines described in the *Police Services Operational Records Classification System*.
15. That the management of the retention and final disposition of the operational records of the Gaming Policy and Enforcement Branch, Ministry of Public Safety and Solicitor General, be in accordance with the records schedules, standards, and guidelines described in the *Gaming Operational Records Classification System*.
16. That the retention and final disposition of cross-government document discovery coordination records created and received by the Tobacco Control Programs Branch, Ministry of Health, be managed in accordance with the Tobacco Litigation Ongoing Records Schedule.

SPECIAL COMMITTEE TO
APPOINT A
CONFLICT OF INTEREST
COMMISSIONER



REPORT
THIRD SESSION, THIRTY-FOURTH PARLIAMENT

SEANWATKIN, 1997

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November 22, 2007

To the Honourable
Legislative Assembly of the
Province of British Columbia

Honourable Members:

We have the honour to present herewith the Report of the Special Committee to Appoint a Conflict of Interest Commissioner.

The Report covers the work of the committee from April 24, 2007 to November 8, 2007.

Respectfully submitted on behalf of the Committee,

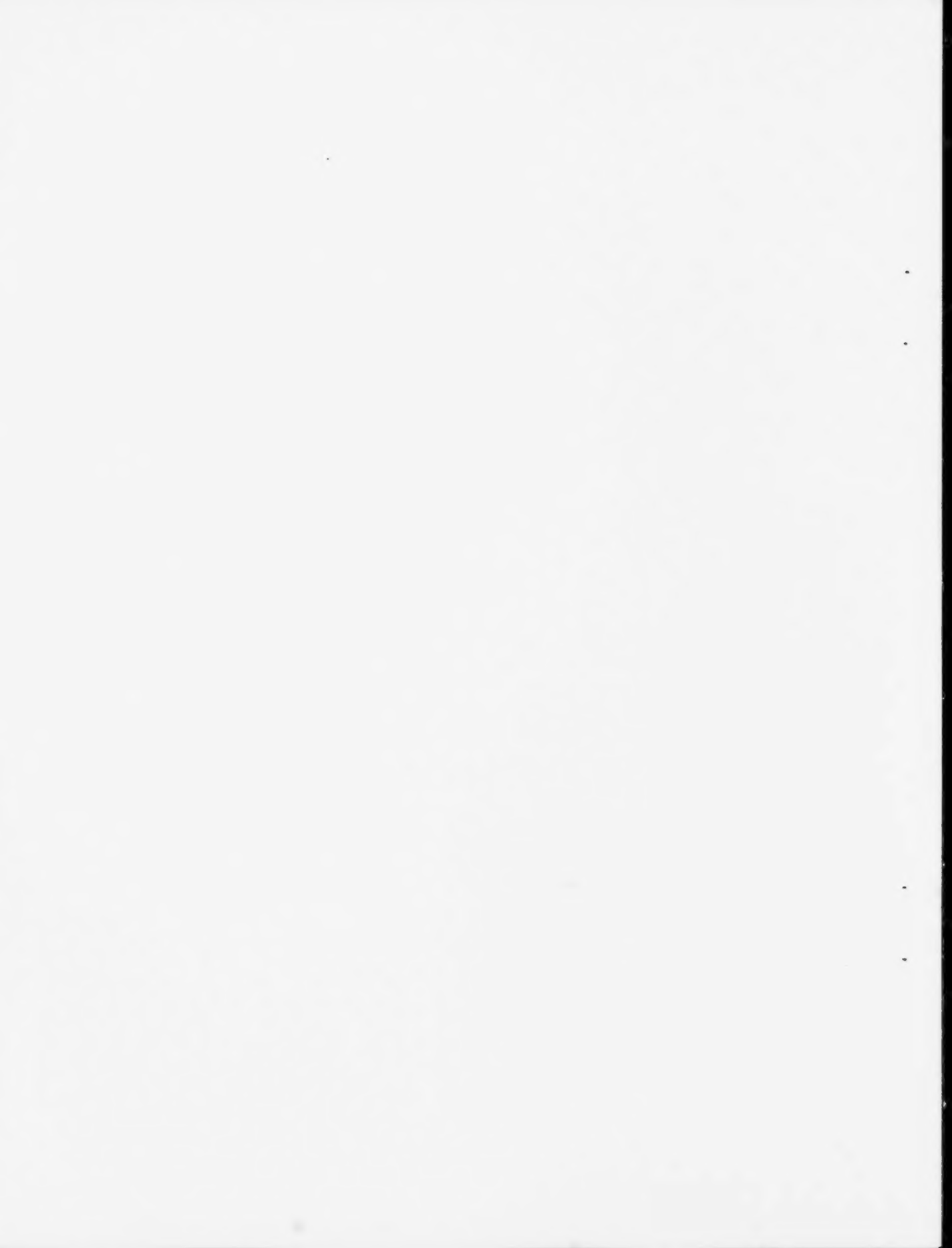
Iain Black, MLA
Chair

Mike Farnworth, MLA
Deputy Chair



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COMPOSITION OF THE COMMITTEE

MEMBERS

Iain Black, MLA	Chair	Port Moody-Westwood
Mike Farnworth, MLA	Deputy Chair	Port Coquitlam-Burke Mountain
Harry Bloy, MLA		Burquitlam
David Chudnovsky, MLA		Vancouver-Kensington
Katherine Whittred, MLA		North Vancouver-Lonsdale

CLERK TO THE COMMITTEE

Craig James, Clerk Assistant and Clerk of Committees

COMMITTEE RESEARCHER

Josie Schofield, Committee Research Analyst

TERMS OF REFERENCE

On April 19, 2007, the Legislative Assembly agreed that a Special Committee to Appoint a Conflict of Interest Commissioner be appointed to select and unanimously recommend to the Legislative Assembly the appointment of a Commissioner, pursuant to section 14 of the *Members' Conflict of Interest Act* (RSBC 1996, c.287) and that the said Committee shall have the powers of a Select Standing Committee and in addition is empowered:

- (a) to appoint of their number, one or more subcommittees and to refer to such subcommittees any of the matters referred to the Committee (but to deal with matters in the order in which the Committee has been authorized to deal with them);
- (b) to sit during a period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;
- (c) to adjourn from place to place as may be convenient; and
- (d) to retain such personnel as required to assist the Committee;

and shall report to the House as soon as possible, or following any adjournment, or at the next following Session, as the case may be; to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.

ACKNOWLEDGEMENTS

The Special Committee would like to acknowledge the contribution of the current Conflict of Interest Commissioner, Hon. H.A.D. Oliver, QC, who will be retiring at the end of the year. During the past ten years, he has brought continuity to the position and promoted high ethical standards that have helped to establish a sound foundation for his successor to build on.

We are certain that the public at large would thank Mr. Oliver for ensuring that the province's conflict-of-interest law has been upheld during his time in office. Members on both sides of the House will remember him fondly for his erudition and wit, sense of humour and wise counsel. He is truly a larger-than-life character who will be missed by both MLAs and Assembly staff.



INTRODUCTION

The Conflict of Interest Commissioner is a non-partisan officer of the Legislative Assembly of British Columbia, with the responsibility of ensuring that MLAs fulfil their obligations under the *Members' Conflict of Interest Act* (RSBC 1996, c. 287). The Commissioner's mandate includes: reviewing Members' confidential disclosure statements, providing advice respecting their financial interests; conducting and reporting on investigations and formal inquiries, when required; and reporting annually on activities undertaken to the Legislative Assembly, through the Speaker.

Section 14(2) of the Act describes the procedure for the appointment of a Conflict of Interest Commissioner. It stipulates that, "On the motion of the Premier in the Legislative Assembly and on the recommendation of 2/3 of the members present, the Lieutenant Governor in Council must appoint the person so recommended to the office of commissioner."

This procedure was used, on May 23, 1991, to appoint the province's first Conflict of Interest Commissioner, Hon. E.N. (Ted) Hughes, QC.

In 1996, the Legislative Assembly assigned the search for a new Commissioner to an all-party parliamentary committee, which was instructed to report back with a unanimous recommendation. On July 30, 1997, the committee presented its report to the House recommending the appointment of Hon. H.A.D. Oliver, QC, and the motion confirming his appointment was carried unanimously by the Legislative Assembly. Once appointed, the Conflict of Interest Commissioner serves a five-year term that can be renewed.

This report contains the Special Committee's unanimous recommendation to the Legislative Assembly regarding the appointment of the province's third Conflict of Interest Commissioner.

MEETING SCHEDULE

During the third session, the recruitment of a new Conflict of Interest Commissioner covered the period between April 24, 2007 and November 8, 2007. In total, 11 meetings were held for the following purposes:

Tuesday, April 24, 2007	Organization/Planning Appointment of search subcommittee
Wednesday, May 9, 2007	Briefing
Wednesday, August 22, 2007	Screening of applications (search subcommittee)
Wednesday, August 29, 2007	Screening of applications (search subcommittee)
Tuesday, September 4, 2007	Selection of applicants to interview
Friday, October 5, 2007	Short-list candidate interview
Friday, October 12, 2007	Short-list candidate interviews
Monday, October 15, 2007	Short-list candidate interview

Wednesday, October 24, 2007

Deliberations

Tuesday, November 6, 2007

Deliberations (search subcommittee)

Thursday, November 8, 2007

Approval of Report to the House

CANDIDATE SELECTION PROCESS

On April 24, 2007, the Special Committee to Appoint a Conflict of Interest Commissioner held its organizational meeting for the third session and authorized the newly elected Chair and Deputy Chair to meet as a subcommittee to plan the candidate selection process. As part of the preliminary planning process, the Committee arranged for an oral briefing, on May 9th, by the incumbent, Hon. H.A.D. Oliver, QC, on the desirable qualifications for a new Conflict of Interest Commissioner.

Subsequently, the Special Committee, with assistance from the Office of the Clerk of Committees, carried out a variety of procedural and administrative tasks including: development of selection criteria, advertisement placement, applicant screening, preparation of candidate profile and interview questions, and reference checks.

In July of this year, advertisements were placed in daily newspapers within British Columbia inviting applications for the position of Conflict of Interest Commissioner. A copy of the advertisement is attached (see Appendix A).

In response, the Special Committee received 44 applications for the position of Conflict of Interest Commissioner — 43 were residents of British Columbia and one lived in another part of Canada. Five individuals were short-listed and asked to complete a written assignment prior to the interviews; however, one candidate withdrew prior to meeting with the Special Committee.

During the interviews — conducted on October 5, 12 and 15 — each of the four remaining candidates was asked a standard set of questions to ensure consistency. The questions were designed to explore a range of skills: legal background and experience, capacity for neutrality and confidentiality, and analytical, decision-making and communication skills.

Once the interviews were concluded, the Special Committee carefully considered the credentials of the four finalists and assessed their ability to interact with Members of the Legislative Assembly and to carry out the statutory duties outlined in the *Members' Conflict of Interest Act* (see Appendix B).

At the meeting on November 8, 2007, the five committee members reached a unanimous decision regarding the appointment of a new Conflict of Interest Commissioner.

RECOMMENDATION

The Committee unanimously recommends to the Legislative Assembly that Paul D.K. Fraser, QC, LL.D. be appointed to the position of Conflict of Interest Commissioner, in accordance with section 14 of the *Members' Conflict of Interest Act*.

BIOGRAPHICAL INFORMATION

Paul D. K. Fraser, Q.C., LL.D.

Paul Fraser has practiced law in British Columbia for over 40 years, specializing in civil and criminal litigation as well as commercial and labour mediation and arbitration. He was made Queen's Counsel in 1982. Over the last 12 years, Mr. Fraser has been appointed as special prosecutor in British Columbia on several occasions. Currently, he is counsel to the national law firm, Fraser Milner Casgrain LLP.

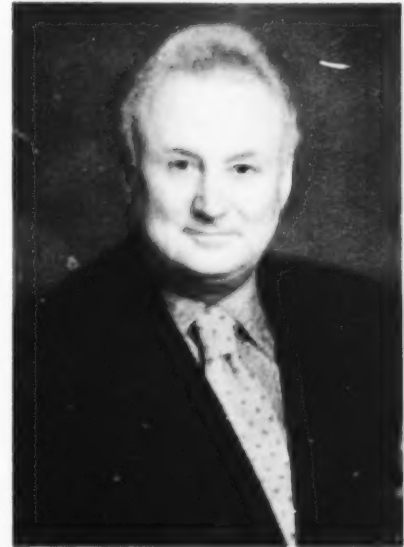
He has appeared as counsel in all the superior courts of British Columbia and Canada. In 1991, Mr. Fraser was selected as a fellow of the American College of Trial Lawyers, and subsequently appointed chair of the Canada-US committee of the college.

Mr. Fraser has also practiced extensively in alternative dispute resolution as an adjudicator and mediator, helping to resolve numerous disputes. In 1995, Mr. Fraser was appointed as the industrial inquiry commissioner in the 1995 national rail dispute. He has also served as a senior adjudicator in the Aboriginal Residential Schools ADR process.

Mr. Fraser is a former president of the Canadian Bar Association, preceded by a term as president of the association's British Columbia branch. He is also a former part-time member of BC Law Reform Commission.

Internationally, he has served as president of the Commonwealth Lawyers Association, whose membership includes bar associations and law societies throughout the Commonwealth. A former special legal advisor to Canada's Minister of Foreign Affairs, Mr. Fraser is currently president of the International Commission of Jurists (Canada), a human rights organization of judges and lawyers founded after the adoption of the United Nations Declaration of Human Rights.

A graduate of UBC Law School, Mr. Fraser was the founding president of the UBC Law Alumni Association. He received an honorary Doctor of Laws from the University of Winnipeg and is currently on the board of directors of the University of Winnipeg Foundation.



APPENDIX A: ADVERTISEMENT

LEGISLATIVE ASSEMBLY OF BRITISH COLUMBIA
Special Committee to Appoint a Conflict of Interest Commissioner
Ian Black, MLC Chair / Mike Farnsworth, MLC Deputy Chair

Conflict of Interest Commissioner

The Conflict of Interest Commissioner is a non-partisan officer of the Legislative Assembly of British Columbia responsible for ensuring that Members of the Legislative Assembly fulfill their obligations under the *Members' Conflict of Interest Act* (RSBC 1996, c 287).

The Commissioner's mandate includes reviewing disclosure statements, providing advice respecting Members' financial interests, conducting investigations and formal inquiries when required, reporting annually on the affairs of his or her office, and issuing reports pursuant to investigations, which may include recommending the imposition of penalties.

The position requires a variety of skills and knowledge. The successful applicant must:

- be impartial and perform their duties in absence of political bias
- be able to interpret legislation concerning conflict of interest, primarily the *Members' Conflict of Interest Act* (RSBC 1996, c 287)
- possess a legal background – judicial expertise would be an asset
- have excellent communication and media skills, including performing public education and outreach initiatives
- be able to provide informed and objective advice to Members regarding ethical questions or conflict of interest considerations in a confidential manner
- be able to discern early signs of potential conflict and promote conflict avoidance and resolution
- establish and maintain professional relationships with elected representatives, and be able to relate comfortably to ministers, MLCs, public servants and citizens

The Commissioner holds office for a term of 5 years and may be reappointed for a further term or terms.

Applications should be received by the Office of the Clerk of Committees at the address below no later than Friday, August 10, 2007. Applications by fax, mail, and in electronic format are welcome. To apply for this position please email your application in confidence to cjames@leg.bc.ca.



FOR FURTHER INFORMATION PLEASE CONTACT:
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Clerk of Committees
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APPENDIX B: MEMBERS' CONFLICT OF INTEREST ACT

[RSBC 1996] CHAPTER 287

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Definitions

1 In this Act:

"**child**" includes a person to whom a member has demonstrated a settled intention to treat as a child of his or her family;

"**commissioner**" means the person appointed under section 14;

"**member**" means a member of the Legislative Assembly or of the Executive Council, or both;

"**private corporation**" means a corporation, all of whose issued and outstanding securities are subject to restrictions on transfer and are beneficially owned directly or indirectly by not more than 50 persons;

"private interest" does not include an interest arising from the exercise of an official power or the performance of an official duty or function that

- (a) applies to the general public,
- (b) affects a member as one of a broad class of electors, or
- (c) concerns the remuneration and benefits of a member or an officer or employee of the Legislative Assembly;

"spouse" means a person who is married to a member or a person who is living with a member as husband and wife but does not include a husband or a wife who is separated and living apart from a member and who

- (a) has entered into a written agreement under which they have agreed to live apart, or
- (b) is subject to an order of the court recognizing the separation.

Conflict of interest

2 (1) For the purposes of this Act, a member has a conflict of interest when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest.

(2) For the purposes of this Act, a member has an apparent conflict of interest if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest.

Conflict of interest prohibition

3 A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

Insider information

4 A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.

Influence

5 A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.

Activities on behalf of constituents

6 This Act does not prohibit the activities in which members normally engage on behalf of constituents.

Accepting extra benefits

7 (1) A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

(2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

(3) If a gift or personal benefit referred to in subsection (2) exceeds \$250 in value, or if the total value received directly or indirectly from one source in any 12 month period exceeds \$250, the member must immediately file with the commissioner a disclosure statement, in the form prescribed by the regulations, indicating

- (a) the nature of the gift or benefit,
- (b) its source, and
- (c) the circumstances under which it was given and accepted.

Former members of Executive Council and former parliamentary secretaries

- 8 (1) The Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission, must not knowingly
- (a) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary, until 24 months have expired after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office,
 - (b) award or approve a contract with, or grant a benefit to, a former member of the Executive Council or former parliamentary secretary who has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit, or
 - (c) award or approve a contract with, or grant a benefit to, a person on whose behalf a former member of the Executive Council or former parliamentary secretary has, during the 24 months after the date when the former member of the Executive Council or former parliamentary secretary ceased to hold office, made representations in respect of the contract or benefit.
- (2) Subsection (1) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.
- (3) Subsection (1) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.
- (4) A former member of the Executive Council or former parliamentary secretary must not, unless 24 months have expired after the date when he or she ceased to hold office,
- (a) accept a contract or benefit that is awarded, approved or granted by the Executive Council, a member of the Executive Council or an employee of a ministry other than an employee of an agency, board or commission,
 - (b) make representations on his or her own behalf with respect to such a contract or benefit, and
 - (c) make representations on another person's behalf with respect to such a contract or benefit.
- (5) Subsection (4) (a) and (b) does not apply to contracts or benefits in respect of further duties in the service of the government.
- (6) Subsection (4) does not apply if the conditions on which the contract or benefit is awarded, approved or granted are the same for all persons similarly entitled.
- (7) A former member of the Executive Council or a former parliamentary secretary must not make representations to the government in relation to any specific ongoing transaction or negotiation to which the government is a party and in which the former member of the Executive Council or former parliamentary secretary was directly involved if the representation would result in the conferring of a benefit not for general application.
- (8) A person who contravenes subsection (4) or (7) commits an offence and is liable, on conviction, to a fine of not more than \$5 000.

Carrying on business

- 9 (1) A member of the Executive Council must not
- (a) engage in employment or in the practice of a profession,
 - (b) carry on a business, or
 - (c) hold an office or directorship other than in a social club, religious organization or political party
- if any of these activities are likely to conflict with the member's public duties.
- (2) A person who becomes a member of the Executive Council must comply with subsection (1) within 60 days of being appointed.

- (3) The commissioner may extend the period referred to in subsection (2) by giving the member a written notice to that effect, and may impose on the extension conditions that the commissioner considers just.
- (4) If a member of the Executive Council complies with subsection (1) (b) by entrusting his or her business to one or more trustees,
- (a) the provisions of the trust must be approved by the commissioner,
 - (b) the trustees must be persons who are at arm's length with the member and approved by the commissioner,
 - (c) the trustees must not consult with the member with respect to managing the trust property, and
 - (d) within 60 days after the formation of the trust, and after that annually, the trustees must provide the commissioner with a confidential report, in a form acceptable to the commissioner, disclosing the assets, liabilities and financial interests contained in the trust.
- (5) For the purposes of this section, the management of routine personal financial interests does not constitute carrying on a business.

Procedure on conflict of interest

- 10 (1) A member who has reasonable grounds to believe that he or she has a conflict of interest in a matter that is before the Legislative Assembly or the Executive Council, or a committee of either of them, must, if present at a meeting considering the matter,
- (a) disclose the general nature of the conflict of interest, and
 - (b) withdraw from the meeting without voting or participating in the consideration of the matter.
- (2) If a member has complied with subsection (1), the Clerk of the Legislative Assembly or secretary of the meeting must record
- (a) the disclosure,
 - (b) the general nature of the conflict of interest disclosed, and
 - (c) the withdrawal of the member from the meeting.
- (3) The Clerk of the Legislative Assembly or secretary of the meeting must file the information recorded under subsection (2) with the commissioner,
- (a) in the case of a meeting of the Legislative Assembly or a committee of the Legislative Assembly, as soon as practicable, and
 - (b) in the case of a meeting of the Executive Council or a committee of the Executive Council, as soon as practicable after the Executive Council's decision on the matter which has been the subject of the disclosure is made public.
- (4) The commissioner must keep all information filed under subsection (3) in a central record kept for that purpose and must
- (a) make the central record available for inspection by any person without charge during normal business hours, and
 - (b) on request by any person provide a copy of the record or portion of it on payment of a reasonable copying charge.

Performance of responsibilities by minister

- 11 (1) If, during the exercise of any official power or the performance of any official duty or function by a member of the Executive Council, a matter arises with respect to which the member has a conflict of interest or apparent conflict of interest, the member must
- (a) refrain at all times from attempting to influence the matter, and

- (b) at any subsequent meeting of the Executive Council or a committee of the Executive Council at which the matter is considered, disclose the general nature of the private interest and withdraw from the meeting without voting or participating in the discussion.
- (2) The Lieutenant Governor in Council may appoint a member of the Executive Council to act in the place of a member referred to in subsection (1) for any matter with respect to which the member referred to in subsection (1) has a conflict of interest or apparent conflict of interest.

Voidability of transaction or procedure

12 The failure of any member to comply with section 10 does not of itself invalidate

- (a) any contract or other financial transaction, or
- (b) any procedure undertaken by the government with respect to a contract or other financial transaction

to which the failure to comply with section 10 relates, but the transaction or procedure is voidable at the instance of the government before the expiration of 2 years from the date of the decision authorizing the transaction, except as against any person who or organization that acted in good faith and without actual notice of the failure to comply with section 10.

Application for restitution

13 Despite anything in this Act, if any person, whether or not the person is or was a member, has realized financial gain in any transaction to which a violation of this Act relates, any other person affected by the financial gain, including the government or a government agency, may apply to the Supreme Court for an order of restitution against the person who has realized the financial gain.

Commissioner

14 (1) There must be appointed a commissioner who is an officer of the Legislative Assembly.

(2) On the motion of the Premier in the Legislative Assembly and on the recommendation of 2/3 of the members present, the Lieutenant Governor in Council must appoint the person so recommended to the office of commissioner.

(3) The commissioner holds office for a term of 5 years and may be reappointed for a further term or terms.

(4) The commissioner may be removed or suspended before the end of the term of office by the Lieutenant Governor in Council for cause on the recommendation of the Legislative Assembly.

(5) The commissioner must be paid compensation as may be set by the Lieutenant Governor in Council.

(6) If

- (a) the commissioner is removed or suspended or the office of the commissioner becomes vacant when the Legislature is sitting but no recommendation under this Act is made by the Legislative Assembly before the end of that session, or
- (b) the commissioner is suspended or the office of the commissioner is or becomes vacant when the Legislature is not sitting,

the Lieutenant Governor in Council may appoint an acting commissioner.

(7) The appointment of an acting commissioner under this section terminates

- (a) on the appointment of a new commissioner under subsection (2),
- (b) at the end of the period of suspension of the commissioner, or
- (c) immediately after the expiry of 20 sitting days after the day on which he or she was appointed,

whichever the case may be and whichever occurs first.

(8) The commissioner may employ or retain persons that the commissioner considers necessary and may

- (a) specify their duties and responsibilities, and
 - (b) establish their remuneration and other terms and conditions of employment, or retainer.
- (9) The *Labour Relations Code* and the *Public Service Labour Relations Act* do not apply to a person employed or retained under subsection (8).
- (10) [Repealed 1999-44-85.]

Annual report

15 The commissioner must report annually on the affairs of his or her office to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly.

Disclosure statement

16 (1) Every member must, within 60 days of being elected, and after that annually, file with the commissioner a confidential disclosure statement in the form prescribed by the regulations.

(2) Subject to subsection (2.1), the disclosure statement must contain

- (a) a statement of the nature of the assets, liabilities and financial interests of the member, the member's spouse and minor children, and private corporations controlled by any of them, and
- (b) any other information that is prescribed by the regulations to be contained in the disclosure statement.

(2.1) The disclosure statement of a member of the Executive Council who has complied with section 9 (1) (b) by entrusting his or her business to one or more trustees need not contain a statement of the nature of the assets, liabilities and financial interests contained in the trust.

(3) After filing a disclosure statement, the member, and the member's spouse if the spouse is available, must meet with the commissioner to ensure that adequate disclosure has been made and to obtain advice from the commissioner on the member's obligations under this Act, and the commissioner may recommend the manner by which the member will comply with those obligations.

(4) If any asset, liability or financial interest described in the disclosure statement relates to a corporation, the commissioner must ascertain whether any other corporation is an affiliate of the first named corporation, as determined under section 2 (1) to (4) of the *Business Corporations Act*.

(5) If the commissioner determines that there is an affiliate of the first named corporation, he or she must

- (a) advise the member of the fact, in writing, and
- (b) mention the fact in the public disclosure statement prepared under section 17.

(6) After filing a disclosure statement, the member must continue to disclose any material change in the assets, liabilities and financial interests of the member, the member's spouse and minor children and private corporations controlled by any of them by filing a statement of material change with the commissioner within 30 days of the material change.

(7) In subsection (6), "**material change**" means a material change as defined in the regulations.

Public disclosure statement

17 (1) After meeting with the member, and with the member's spouse if the spouse is available, the commissioner must prepare a public disclosure statement containing all relevant information provided by the member, and by the member's spouse if the spouse met with the commissioner, in respect of the member, the spouse and minor children, except

- (a) the municipal address or legal description of land that is primarily for the residential or recreational use of the member or the member's spouse or minor children, and
- (b) personal property used for transportation or for household, educational, recreational, social or aesthetic purposes.

- (2) The public disclosure statement must contain a statement of any gifts or benefits that have been disclosed to the commissioner under section 7 (3).
- (3) The commissioner must, as soon as is practicable, file the public disclosure statement with the Clerk of the Legislative Assembly who must
 - (a) make the statement available to any person for inspection without charge and during normal business hours, and
 - (b) provide a copy of the statement on payment of a reasonable copying charge.

Commissioner's opinions and recommendations

- 18 (1) A member may request, by application in writing, that the commissioner give an opinion or recommendation on any matter respecting the obligations of the member under this Act or under section 25 of the *Constitution Act*.
- (2) The commissioner may make such inquiries as the commissioner considers appropriate and provide the member with a written opinion and recommendations.
- (3) If the commissioner is of the opinion that a member has or may have a conflict of interest, the commissioner may, in the recommendations, specify the time by which the member must resolve the matter.
- (4) The opinion and recommendations of the commissioner are confidential, but may be released by the member or with the consent of the member in writing.
- (5) If the commissioner determines that a member has not contravened this Act, that determination is final for all purposes of the Act and any proceeding under the Act, so long as the facts presented by the member to the commissioner under subsection (1) were accurate and complete.

Commissioner's opinion on referred question

- 19 (1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.
- (2) A member of the public who has reasonable and probable grounds to believe that there has been a contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the alleged contravention.
- (3) The Executive Council may request that the commissioner give an opinion on any matter respecting the compliance of a member of the Executive Council or a parliamentary secretary with the provisions of this Act or of section 25 of the *Constitution Act*.
- (4) The Legislative Assembly may request that the commissioner give an opinion on any matter respecting the compliance of a member with the provisions of this Act or of section 25 of the *Constitution Act*.

Special assignments

- 20 At the request of the Lieutenant Governor in Council or the Legislative Assembly, the commissioner may undertake special assignments that he or she considers appropriate.

Inquiry

- 21 (1) On receiving a request under section 19, and on giving the member concerned reasonable notice, the commissioner may conduct an inquiry.
- (2) If the request for an opinion is made under section 19 or the commissioner undertakes a special assignment under section 20, the commissioner has the powers of a commissioner under sections 15 and 16 of the *Inquiry Act*.

- (3) If the request for an opinion is made under section 19 (1), the commissioner must report his or her opinion to the Speaker of the Legislative Assembly who must cause the report to be laid before the Legislative Assembly if it is in session or, if not in session, to the Clerk of the Legislative Assembly who must send a copy of it to all members of the Legislative Assembly.
- (4) If it appears to the commissioner that the report may adversely affect the member, the commissioner must inform the member of the particulars and give the member the opportunity to make representations, either orally or in writing, at the discretion of the commissioner, before the commissioner finalizes the report.
- (5) If the commissioner is of the opinion that the member making the application under section 19 (1) had no reasonable and probable grounds for making it, the commissioner may state that in his or her report, and if he or she does so, the commissioner must report the matter to the Speaker who must lay the report before the Legislative Assembly and the Legislative Assembly may, after considering the matter, hold the member in contempt of the Legislative Assembly.
- (6) If the request for an opinion is made under section 19 (3), the commissioner must report his or her opinion to the Secretary of the Executive Council.

Penalties

- 22 (1) If the commissioner finds
 - (a) after an inquiry under section 21 that a member has contravened section 3, 4, 5, 7, 8, 9 or 10 (1), or
 - (b) that a member has refused to file a disclosure statement within the time provided by section 16 or that a member has failed to comply with a recommendation of the commissioner under section 16 (3) or 19,
 the commissioner may recommend, in a report that is laid before the Legislative Assembly
 - (c) that the member be reprimanded,
 - (d) that the member be suspended for a period specified in the report,
 - (e) that the member be fined an amount not exceeding \$5 000, or
 - (f) that the member's seat be declared vacant until an election is held in the member's electoral district.
- (2) The Legislative Assembly must consider the commissioner's report and respond to it as subsection (3) provides
 - (a) within 30 days after it is laid before the Legislative Assembly, or
 - (b) within 30 days after the next session begins if the Legislative Assembly is not in session.
- (3) The Legislative Assembly may order the imposition of the recommendation of the commissioner under subsection (1) or may reject the recommendation, but the Legislative Assembly must not further inquire into the contravention or impose a punishment other than the one recommended by the commissioner.

Protection of commissioner

- 23 No action of any kind lies against the commissioner for anything he or she does under this Act.

Appropriation

- 24 Money required for the operation of the office of the commissioner may be paid out of the consolidated revenue fund.

Offence Act

- 25 Section 5 of the *Offence Act* does not apply to this Act.

Power to make regulations

- 26 Subject to the approval of the Lieutenant Governor in Council, the commissioner may make regulations prescribing any matter that is contemplated in this Act to be prescribed by regulations.

